IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 18148 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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ABDULKADAR @ KADAR ABDUL MAJID QURESHI

Versus

STATE OF GUJARAT

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Appearance:

1. Special Civil Application No. 18148 of 2003

MR HR PRAJAPATI for Petitioner No. 1

MR MR PRAJAPATI for Petitioner No. 1

RULE SERVED for Respondent No. 1-2

MS MITA S PANCHAL AGP for Respondent No. 3

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CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 03/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 28/11/03 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that three first information reports were registered against him before Prohibition Police Station South Division, East Division and West Division at C.R.No.361/2003, 1583/2003 and 1884/2003 on 20/03/03, 08/11/03 and 26/11/03 respectively. It was also alleged against the petitioner that two witnesses had given statements against the petitioner saying that he was engaged in bootlegging activities leading to a threat to public order.

3. On the strength of the aforesaid registered offences and two statements of unnamed witnesses, the detaining authority found that the petitioner was required to be detained, with a view to prevent him from indulging in bootlegging activities, which amounted to a threat to public order. Accordingly, the impugned order of detention was passed against the petitioner.

4. The petitioner has challenged the said order on several grounds. One of the grounds agitated by the petitioner is that the representation submitted by the petitioner was not promptly dealt with by the concerned authority, and therefore, the right of the petitioner to get his representation decided, within a reasonable time, has been denied. That, therefore, the order of detention is illegal and it deserves to be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita S Panchal learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. The learned advocate for the petitioner has contended that the petitioner had submitted his representation and it was not promptly dealt with. He has also contended that the said representation was not dealt with even within a reasonable time. In reply to the said argument, the learned AGP has submitted affidavit of the detaining authority. It is taken on record. In para 10 of the said affidavit, it has been stated by the detaining authority that the representation of the petitioner dated 17/12/03 was received by the office on 20/12/03 and as the order of detention had

already been approved by the State Government, the representation was forwarded to the State Government and to the Advisory Board on 24/12/03.

7. This shows that the representation was kept pending for about three days between 20/12/03 and 24/12/03. The affidavit does not show as to why the representation was not forwarded to the State Government or to the Advisory Board, within a reasonable time, after its receipt. Therefore, it is a case wherein there was a delay in forwarding the representation of the petitioner and that delay has not been explained.

8. It is well settled that under Article 22(5) of the Constitution of India, a detenu has a constitutional right to submit an effective representation against his detention. A right to submit an effective representation includes a right to get it decided within a reasonable time. If the representation is made and if it is not decided within a reasonable time, then the right to submit a representation can be said to have been impliedly denied.

9. In the present case, the aforesaid delay has not been explained to any extent by the detaining authority. In that view of the matter, the further continuance of the detention of the petitioner cannot be sustained in the eye of law and the detenu is required to be released from detention. This can be done by quashing and setting aside the impugned order of detention. The other contentions have not been pressed by the learned advocate for the petitioner.

10. For the foregoing reasons, this petition is allowed. The impugned order of detention dated 28/11/03 passed by respondent no.2 against the petitioner, is ordered to be quashed and set aside. Detenu, Abdulkadar @ Kadar Abdul Majid Qureshi, is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute with no order as to costs. Direct service permitted.

(D. P. Buch, J.)

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